

110TH CONGRESS
2D SESSION

S.

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. REID introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer-First Energy Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—TAX PROVISIONS RELATED TO OIL AND GAS

2

- Sec. 101. Denial of deduction for major integrated oil companies for income attributable to domestic production of oil, gas, or primary products thereof.
- Sec. 102. Elimination of the different treatment of foreign oil and gas extraction income and foreign oil related income for purposes of the foreign tax credit.
- Sec. 103. Windfall profits tax.
- Sec. 104. Energy Independence and Security Trust Fund.

TITLE II—PRICE GOUGING

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Energy emergency and additional price gouging enforcement.
- Sec. 204. Presidential declaration of energy emergency.
- Sec. 205. Enforcement by the Federal Trade Commission.
- Sec. 206. Enforcement by State attorneys general.
- Sec. 207. Penalties.
- Sec. 208. Effect on other laws.

TITLE III—STRATEGIC PETROLEUM RESERVE

- Sec. 301. Suspension of petroleum acquisition for Strategic Petroleum Reserve.

TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS

- Sec. 401. No Oil Producing and Exporting Cartels Act of 2008.

TITLE V—MARKET SPECULATION

- Sec. 501. Speculative limits and transparency for off-shore oil trading.
- Sec. 502. Margin level for crude oil.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) excessive prices for petroleum products have
4 created, or imminently threaten to create, severe
5 economic dislocations and hardships, including the
6 loss of jobs, business failures, disruption of economic
7 activity, curtailment of vital public services, and
8 price increases throughout the economy;

9 (2) those hardships and dislocations jeopardize
10 the normal flow of commerce and constitute a na-
11 tional energy and economic crisis that is a threat to

1 the public health, safety, and welfare of the United
2 States;

3 (3) consumers, workers, small businesses, and
4 large businesses of the United States are particu-
5 larly vulnerable to those price increase due to the
6 failure of the President to aggressively develop alter-
7 natives to petroleum and petroleum products and to
8 promote efficiency and conservation;

9 (4) reliable and affordable supplies of crude oil
10 and products refined from crude oil (including gaso-
11 line, diesel fuel, heating oil, and jet fuel) are vital to
12 the economic and national security of the United
13 States given current energy infrastructure and tech-
14 nology;

15 (5) the price of crude oil and products refined
16 from crude oil (including gasoline, diesel fuel, heat-
17 ing oil, and jet fuel) have skyrocketed to record lev-
18 els and are continuing to rise;

19 (6) since 2001, oil prices have increased from
20 \$29 per barrel to levels near \$120 per barrel and
21 gasoline prices have more than doubled from \$1.47
22 per gallon to more than \$3.50 per gallon;

23 (7) the record prices for crude oil and products
24 refined from crude oil (including gasoline, diesel
25 fuel, heating oil, and jet fuel)—

1 (A) are hurting millions of consumers,
2 workers, small businesses, and large businesses
3 of the United States, and threaten long-term
4 damage to the economy and security of the
5 United States;

6 (B) are partially due to—

7 (i) the declining value of the dollar
8 and a widespread lack of confidence in the
9 management of economic and foreign pol-
10 icy by the President;

11 (ii) the accumulation of national debt
12 and growing budget deficits under the
13 failed economic policies of the President;
14 and

15 (iii) high levels of military expendi-
16 tures under the failed policies of the Presi-
17 dent in Iraq; and

18 (C) are no longer justified by traditional
19 forces of supply and demand;

20 (8) rampant speculation in the markets for
21 crude oil and products refined from crude oil has
22 magnified the price increases and market volatility
23 resulting from those underlying causes of price in-
24 creases; and

1 (9) Congress must take urgent action to protect
2 consumers, workers, and businesses of the United
3 States from rampant speculation in the energy mar-
4 kets and the price increases resulting from the failed
5 domestic and foreign policies of the President.

6 **TITLE I—TAX PROVISIONS**
7 **RELATED TO OIL AND GAS**

8 **SEC. 101. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED**
9 **OIL COMPANIES FOR INCOME ATTRIBUTABLE**
10 **TO DOMESTIC PRODUCTION OF OIL, GAS, OR**
11 **PRIMARY PRODUCTS THEREOF.**

12 (a) IN GENERAL.—Subparagraph (B) of section
13 199(c)(4) (relating to exceptions) is amended by striking
14 “or” at the end of clause (ii), by striking the period at
15 the end of clause (iii) and inserting “, or”, and by insert-
16 ing after clause (iii) the following new clause:

17 “(iv) in the case of any major inte-
18 grated oil company (as defined in section
19 167(h)(5)(B)), the production, refining,
20 processing, transportation, or distribution
21 of oil, gas, or any primary product thereof
22 during any taxable year described in sec-
23 tion 167(h)(5)(B).”.

1 (b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is
2 amended by adding at the end the following flush sen-
3 tence:

4 “For purposes of clause (iv), the term ‘primary
5 product’ has the same meaning as when used in
6 section 927(a)(2)(C), as in effect before its re-
7 peal.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2008.

11 **SEC. 102. ELIMINATION OF THE DIFFERENT TREATMENT**
12 **OF FOREIGN OIL AND GAS EXTRACTION IN-**
13 **COME AND FOREIGN OIL RELATED INCOME**
14 **FOR PURPOSES OF THE FOREIGN TAX CRED-**
15 **IT.**

16 (a) IN GENERAL.—Subsections (a) and (b) of section
17 907 of the Internal Revenue Code of 1986 (relating to
18 special rules in case of foreign oil and gas income) are
19 amended to read as follows:

20 “(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN
21 TAX UNDER SECTION 901.—In applying section 901, the
22 amount of any foreign oil and gas taxes paid or accrued
23 (or deemed to have been paid) during the taxable year
24 which would (but for this subsection) be taken into ac-
25 count for purposes of section 901 shall be reduced by the

1 amount (if any) by which the amount of such taxes ex-
2 ceeds the product of—

3 “(1) the amount of the combined foreign oil
4 and gas income for the taxable year,

5 “(2) multiplied by—

6 “(A) in the case of a corporation, the per-
7 centage which is equal to the highest rate of tax
8 specified under section 11(b), or

9 “(B) in the case of an individual, a frac-
10 tion the numerator of which is the tax against
11 which the credit under section 901(a) is taken
12 and the denominator of which is the taxpayer’s
13 entire taxable income.

14 “(b) COMBINED FOREIGN OIL AND GAS INCOME;
15 FOREIGN OIL AND GAS TAXES.—For purposes of this sec-
16 tion—

17 “(1) COMBINED FOREIGN OIL AND GAS IN-
18 COME.—The term ‘combined foreign oil and gas in-
19 come’ means, with respect to any taxable year, the
20 sum of—

21 “(A) foreign oil and gas extraction income,
22 and

23 “(B) foreign oil related income.

1 “(2) FOREIGN OIL AND GAS TAXES.—The term
2 ‘foreign oil and gas taxes’ means, with respect to
3 any taxable year, the sum of—

4 “(A) oil and gas extraction taxes, and

5 “(B) any income, war profits, and excess
6 profits taxes paid or accrued (or deemed to
7 have been paid or accrued under section 902 or
8 960) during the taxable year with respect to
9 foreign oil related income (determined without
10 regard to subsection (c)(4)) or loss which would
11 be taken into account for purposes of section
12 901 without regard to this section.”.

13 (b) RECAPTURE OF FOREIGN OIL AND GAS
14 LOSSES.—Paragraph (4) of section 907(c) of the Internal
15 Revenue Code of 1986 (relating to recapture of foreign
16 oil and gas extraction losses by recharacterizing later ex-
17 traction income) is amended to read as follows:

18 “(4) RECAPTURE OF FOREIGN OIL AND GAS
19 LOSSES BY RECHARACTERIZING LATER COMBINED
20 FOREIGN OIL AND GAS INCOME.—

21 “(A) IN GENERAL.—The combined foreign
22 oil and gas income of a taxpayer for a taxable
23 year (determined without regard to this para-
24 graph) shall be reduced—

1 “(i) first by the amount determined
2 under subparagraph (B), and

3 “(ii) then by the amount determined
4 under subparagraph (C).

5 The aggregate amount of such reductions shall
6 be treated as income (from sources without the
7 United States) which is not combined foreign
8 oil and gas income.

9 “(B) REDUCTION FOR PRE-2008 FOREIGN
10 OIL EXTRACTION LOSSES.—The reduction
11 under this paragraph shall be equal to the less-
12 er of—

13 “(i) the foreign oil and gas extraction
14 income of the taxpayer for the taxable year
15 (determined without regard to this para-
16 graph), or

17 “(ii) the excess of—

18 “(I) the aggregate amount of for-
19 eign oil extraction losses for preceding
20 taxable years beginning after Decem-
21 ber 31, 1982, and before January 1,
22 2008, over

23 “(II) so much of such aggregate
24 amount as was recharacterized under
25 this paragraph (as in effect before

1 and after the date of the enactment of
2 the Consumer-First Energy Act of
3 2008) for preceding taxable years be-
4 ginning after December 31, 1982.

5 “(C) REDUCTION FOR POST-2008 FOREIGN
6 OIL AND GAS LOSSES.—The reduction under
7 this paragraph shall be equal to the lesser of—

8 “(i) the combined foreign oil and gas
9 income of the taxpayer for the taxable year
10 (determined without regard to this para-
11 graph), reduced by an amount equal to the
12 reduction under subparagraph (A) for the
13 taxable year, or

14 “(ii) the excess of—

15 “(I) the aggregate amount of for-
16 eign oil and gas losses for preceding
17 taxable years beginning after Decem-
18 ber 31, 2008, over

19 “(II) so much of such aggregate
20 amount as was recharacterized under
21 this paragraph for preceding taxable
22 years beginning after December 31,
23 2008.

24 “(D) FOREIGN OIL AND GAS LOSS DE-
25 FINED.—

1 “(i) IN GENERAL.—For purposes of
2 this paragraph, the term ‘foreign oil and
3 gas loss’ means the amount by which—

4 “(I) the gross income for the tax-
5 able year from sources without the
6 United States and its possessions
7 (whether or not the taxpayer chooses
8 the benefits of this subpart for such
9 taxable year) taken into account in
10 determining the combined foreign oil
11 and gas income for such year, is ex-
12 ceeded by

13 “(II) the sum of the deductions
14 properly apportioned or allocated
15 thereto.

16 “(ii) NET OPERATING LOSS DEDUC-
17 TION NOT TAKEN INTO ACCOUNT.—For
18 purposes of clause (i), the net operating
19 loss deduction allowable for the taxable
20 year under section 172(a) shall not be
21 taken into account.

22 “(iii) EXPROPRIATION AND CASUALTY
23 LOSSES NOT TAKEN INTO ACCOUNT.—For
24 purposes of clause (i), there shall not be
25 taken into account—

1 “(I) any foreign expropriation
2 loss (as defined in section 172(h) (as
3 in effect on the day before the date of
4 the enactment of the Revenue Rec-
5 onciliation Act of 1990)) for the tax-
6 able year, or

7 “(II) any loss for the taxable
8 year which arises from fire, storm,
9 shipwreck, or other casualty, or from
10 theft,

11 to the extent such loss is not compensated
12 for by insurance or otherwise.

13 “(iv) FOREIGN OIL EXTRACTION
14 LOSS.—For purposes of subparagraph
15 (B)(ii)(I), foreign oil extraction losses shall
16 be determined under this paragraph as in
17 effect on the day before the date of the en-
18 actment of the Consumer-First Energy Act
19 of 2008.”.

20 (c) CARRYBACK AND CARRYOVER OF DISALLOWED
21 CREDITS.—Section 907(f) of the Internal Revenue Code
22 of 1986 (relating to carryback and carryover of disallowed
23 credits) is amended—

1 (1) by striking “oil and gas extraction taxes”
2 each place it appears and inserting “foreign oil and
3 gas taxes”, and

4 (2) by adding at the end the following new
5 paragraph:

6 “(4) TRANSITION RULES FOR PRE-2009 AND
7 2009 DISALLOWED CREDITS.—

8 “(A) PRE-2009 CREDITS.—In the case of
9 any unused credit year beginning before Janu-
10 ary 1, 2009, this subsection shall be applied to
11 any unused oil and gas extraction taxes carried
12 from such unused credit year to a year begin-
13 ning after December 31, 2008—

14 “(i) by substituting ‘oil and gas ex-
15 traction taxes’ for ‘foreign oil and gas
16 taxes’ each place it appears in paragraphs
17 (1), (2), and (3), and

18 “(ii) by computing, for purposes of
19 paragraph (2)(A), the limitation under
20 subparagraph (A) for the year to which
21 such taxes are carried by substituting ‘for-
22 eign oil and gas extraction income’ for ‘for-
23 eign oil and gas income’ in subsection (a).

24 “(B) 2009 CREDITS.—In the case of any
25 unused credit year beginning in 2009, the

1 amendments made to this subsection by the
2 Consumer-First Energy Act of 2008 shall be
3 treated as being in effect for any preceding year
4 beginning before January 1, 2009, solely for
5 purposes of determining how much of the un-
6 used foreign oil and gas taxes for such unused
7 credit year may be deemed paid or accrued in
8 such preceding year.”.

9 (d) CONFORMING AMENDMENT.—Section 6501(i) of
10 the Internal Revenue Code of 1986 is amended by striking
11 “oil and gas extraction taxes” and inserting “foreign oil
12 and gas taxes”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2008.

16 **SEC. 103. WINDFALL PROFITS TAX.**

17 (a) IN GENERAL.—Subtitle E of the Internal Rev-
18 enue Code of 1986 (relating to alcohol, tobacco, and cer-
19 tain other excise taxes) is amended by adding at the end
20 thereof the following new chapter:

21 **“CHAPTER 56—WINDFALL PROFITS ON**
22 **CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; qualified investment.

“Sec. 5898. Special rules and definitions.

1 **“SEC. 5896. IMPOSITION OF TAX.**

2 “(a) IN GENERAL.—In addition to any other tax im-
3 posed under this title, there is hereby imposed on any ap-
4 plicable taxpayer an excise tax in an amount equal to 25
5 percent of the excess of—

6 “(1) the windfall profit of such taxpayer, over
7 “(2) the amount of the qualified investment of
8 such applicable taxpayer.

9 “(b) APPLICABLE TAXPAYER.—For purposes of this
10 chapter, the term ‘applicable taxpayer’ means, with re-
11 spect to operations in the United States—

12 “(1) any integrated oil company (as defined in
13 section 291(b)(4)), and

14 “(2) any other producer or refiner of crude oil
15 with gross receipts from the sale of such crude oil
16 or refined oil products for the taxable year exceeding
17 \$1,000,000,000.

18 **“SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.**

19 “(a) GENERAL RULE.—For purposes of this chapter,
20 the term ‘windfall profit’ means the excess of the adjusted
21 taxable income of the applicable taxpayer for the taxable
22 year over the reasonably inflated average profit for such
23 taxable year.

24 “(b) ADJUSTED TAXABLE INCOME.—For purposes of
25 this chapter, with respect to any applicable taxpayer, the
26 adjusted taxable income for any taxable year is equal to

1 the taxable income for such taxable year (within the mean-
2 ing of section 63 and determined without regard to this
3 subsection)—

4 “(1) increased by any interest expense deduc-
5 tion, charitable contribution deduction, and any net
6 operating loss deduction carried forward from any
7 prior taxable year, and

8 “(2) reduced by any interest income, dividend
9 income, and net operating losses to the extent such
10 losses exceed taxable income for the taxable year.

11 In the case of any applicable taxpayer which is a foreign
12 corporation, the adjusted taxable income shall be deter-
13 mined with respect to such income which is effectively con-
14 nected with the conduct of a trade or business in the
15 United States.

16 “(c) REASONABLY INFLATED AVERAGE PROFIT.—
17 For purposes of this chapter, with respect to any applica-
18 ble taxpayer, the reasonably inflated average profit for any
19 taxable year is an amount equal to the average of the ad-
20 justed taxable income of such taxpayer for taxable years
21 beginning during the 2001–2005 taxable year period (de-
22 termined without regard to the taxable year with the high-
23 est adjusted taxable income in such period) plus 10 per-
24 cent of such average.

1 “(d) QUALIFIED INVESTMENT.—For purposes of this
2 chapter—

3 “(1) IN GENERAL.—The term ‘qualified invest-
4 ment’ means, with respect to any applicable tax-
5 payer, means any amount paid or incurred with re-
6 spect to—

7 “(A) section 263(c) costs,

8 “(B) qualified refinery property (as defined
9 in section 179C(c) and determined without re-
10 gard to any termination date),

11 “(C) any qualified facility described in
12 paragraph (1), (2), (3), or (4) of section 45(d)
13 (determined without regard to any placed in
14 service date), or

15 “(D) any facility for the production renew-
16 able fuel or advanced biofuel (as defined in sec-
17 tion 211(o) of the Clean Air Act 942 U.S.C.
18 7545).

19 “(2) SECTION 263(c) COSTS.—For purposes of
20 this subsection, the term ‘section 263(c) costs’
21 means intangible drilling and development costs in-
22 curred by the taxpayer which (by reason of an elec-
23 tion under section 263(c)) may be deducted as ex-
24 penses for purposes of this title (other than this

1 paragraph). Such term shall not include costs in-
2 curred in drilling a nonproductive well.

3 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

4 “(a) WITHHOLDING AND DEPOSIT OF TAX.—The
5 Secretary shall provide such rules as are necessary for the
6 withholding and deposit of the tax imposed under section
7 5896.

8 “(b) RECORDS AND INFORMATION.—Each taxpayer
9 liable for tax under section 5896 shall keep such records,
10 make such returns, and furnish such information as the
11 Secretary may by regulations prescribe.

12 “(c) RETURN OF WINDFALL PROFIT TAX.—The Sec-
13 retary shall provide for the filing and the time of such
14 filing of the return of the tax imposed under section 5896.

15 “(d) CRUDE OIL.—The term ‘crude oil’ includes
16 crude oil condensates and natural gasoline.

17 “(e) BUSINESSES UNDER COMMON CONTROL.—For
18 purposes of this chapter, all members of the same con-
19 trolled group of corporations (within the meaning of sec-
20 tion 267(f)) and all persons under common control (within
21 the meaning of section 52(b) but determined by treating
22 an interest of more than 50 percent as a controlling inter-
23 est) shall be treated as 1 person.

1 “(f) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this chapter.”.

4 (b) CLERICAL AMENDMENT.—The table of chapters
5 for subtitle E of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following new item:

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.”.

7 (c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—
8 The first sentence of section 164(a) of the Internal Rev-
9 enue Code of 1986 (relating to deduction for taxes) is
10 amended by inserting after paragraph (5) the following
11 new paragraph:

12 “(6) The windfall profit tax imposed by section
13 5896.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2007.

17 **SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST**
18 **FUND.**

19 (a) ESTABLISHMENT.—Subchapter A of chapter 98
20 of the Internal Revenue Code of 1986 (relating to trust
21 fund code) is amended by adding at the end the following
22 new section:

1 **“SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST**
2 **FUND.**

3 “(a) CREATION OF TRUST FUND.—There is estab-
4 lished in the Treasury of the United States a trust fund
5 to be known as ‘Energy Independence and Security Trust
6 Fund’ (referred to in this section as the ‘Trust Fund’),
7 consisting of such amounts as may be appropriated or
8 credited to the Trust Fund as provided in this section or
9 section 9602(b).

10 “(b) TRANSFERS TO TRUST FUND.—There is hereby
11 appropriated to the Trust Fund an amount equivalent to
12 the increase in the revenues received in the Treasury as
13 the result of the amendments made by sections 101, 102,
14 and 103 of the Consumer-First Energy Act of 2008.

15 “(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—
16 Amounts in the Trust Fund shall be available, as provided
17 by appropriation Acts, for the purposes of reducing the
18 dependence of the United States on foreign and
19 unsustainable energy sources and reducing the risks of
20 global warming through programs and measures that—

21 “(1) reduce the burdens on consumers of rising
22 energy prices;

23 “(2) diversify and expand the use of secure, ef-
24 ficient, and environmentally-friendly energy supplies
25 and technologies;

1 “(3) result in net reductions in emissions of
2 greenhouse gases; and

3 “(4) prevent energy price gouging, profiteering,
4 and market manipulation.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for subchapter A of chapter 98 of such Code is amended
7 by adding at the end the following new item:

“Sec. 9511. Energy Independence and Security Trust Fund.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on the date of the enactment
10 of this Act.

11 **TITLE II—PRICE GOUGING**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Petroleum Consumer
14 Price Gouging Protection Act”.

15 **SEC. 202. DEFINITIONS.**

16 In this title:

17 (1) AFFECTED AREA.—The term “affected
18 area” means an area covered by a Presidential dec-
19 laration of energy emergency.

20 (2) SUPPLIER.—The term “supplier” means
21 any person engaged in the trade or business of sell-
22 ing or reselling, at retail or wholesale, or distributing
23 crude oil, gasoline, petroleum distillates, or biofuel.

1 (3) PRICE GOUGING.—The term “price
2 gouging” means the charging of an unconscionably
3 excessive price by a supplier in an affected area.

4 (4) UNCONSCIONABLY EXCESSIVE PRICE.—The
5 term “unconscionably excessive price” means an av-
6 erage price charged during an energy emergency de-
7 clared by the President in an area and for a product
8 subject to the declaration, that—

9 (A)(i)(I) constitutes a gross disparity from
10 the average price at which it was offered for
11 sale in the usual course of the supplier’s busi-
12 ness during the 30 days prior to the President’s
13 declaration of an energy emergency; and

14 (II) grossly exceeds the prices at which the
15 same or similar crude oil, gasoline, petroleum
16 distillates, or biofuel was readily obtainable by
17 purchasers from other suppliers in the same rel-
18 evant geographic market within the affected
19 area; or

20 (ii) represents an exercise of unfair lever-
21 age or unconscionable means on the part of the
22 supplier, during a period of declared energy
23 emergency; and

24 (B) is not attributable to increased whole-
25 sale or operational costs, including replacement

1 costs, outside the control of the supplier, in-
2 curred in connection with the sale of crude oil,
3 gasoline, petroleum distillates, or biofuel, and is
4 not attributable to local, regional, national, or
5 international market conditions.

6 (5) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 **SEC. 203. ENERGY EMERGENCY AND ADDITIONAL PRICE**
9 **GOUGING ENFORCEMENT.**

10 (a) IN GENERAL.—During any energy emergency de-
11 clared by the President under section 204 of this title, it
12 is unlawful for any supplier to sell, or offer to sell crude
13 oil, gasoline, petroleum distillates, or biofuel subject to
14 that declaration in, or for use in, the area to which that
15 declaration applies at an unconscionably excessive price.

16 (b) FACTORS CONSIDERED.—In determining whether
17 a violation of subsection (a) has occurred, there shall be
18 taken into account, among other factors, whether—

19 (1) the price charged was a price that would
20 reasonably exist in a competitive and freely func-
21 tioning market; and

22 (2) the amount of gasoline, other petroleum dis-
23 tillates, or biofuel the seller produced, distributed, or
24 sold during the period the Proclamation was in ef-

1 feet increased over the average amount during the
2 preceding 30 days.

3 **SEC. 204. PRESIDENTIAL DECLARATION OF ENERGY EMER-**
4 **GENCY.**

5 (a) IN GENERAL.—If the President finds that the
6 health, safety, welfare, or economic well-being of the citi-
7 zens of the United States is at risk because of a shortage
8 or imminent shortage of adequate supplies of crude oil,
9 gasoline, petroleum distillates, or biofuel due to a disrup-
10 tion in the national distribution system for crude oil, gaso-
11 line, petroleum distillates, or biofuel (including such a
12 shortage related to a major disaster (as defined in section
13 102(2) of the Robert T. Stafford Disaster Relief and
14 Emergency Assistance Act (42 U.S.C. 5122(2))), or sig-
15 nificant pricing anomalies in national energy markets for
16 crude oil, gasoline, petroleum distillates, or biofuel the
17 President may declare that a Federal energy emergency
18 exists.

19 (b) SCOPE AND DURATION.—The emergency declara-
20 tion shall specify—

- 21 (1) the period, not to exceed 30 days, for which
22 the declaration applies;
- 23 (2) the circumstance or condition necessitating
24 the declaration; and

1 (3) the area or region to which it applies which
2 may not be limited to a single State; and

3 (4) the product or products to which it applies.

4 (c) EXTENSIONS.—The President may—

5 (1) extend a declaration under subsection (a)
6 for a period of not more than 30 days;

7 (2) extend such a declaration more than once;
8 and

9 (3) discontinue such a declaration before its ex-
10 piration.

11 **SEC. 205. ENFORCEMENT BY THE FEDERAL TRADE COM-**
12 **MISSION.**

13 (a) ENFORCEMENT.—This title shall be enforced by
14 the Federal Trade Commission in the same manner, by
15 the same means, and with the same jurisdiction as though
16 all applicable terms of the Federal Trade Commission Act
17 were incorporated into and made a part of this title. In
18 enforcing section 203 of this title, the Commission shall
19 give priority to enforcement actions concerning companies
20 with total United States wholesale or retail sales of crude
21 oil, gasoline, petroleum distillates, and biofuel in excess
22 of \$500,000,000 per year but shall not exclude enforce-
23 ment actions against companies with total United States
24 wholesale sales of \$500,000,000 or less per year.

1 (b) VIOLATION IS TREATED AS UNFAIR OR DECEP-
2 TIVE ACT OR PRACTICE.—The violation of any provision
3 of this title shall be treated as an unfair or deceptive act
4 or practice proscribed under a rule issued under section
5 18(a)(1)(B) of the Federal Trade Commission Act (15
6 U.S.C. 57a(a)(1)(B)).

7 (c) COMMISSION ACTIONS.—Following the declara-
8 tion of an energy emergency by the President under sec-
9 tion 204 of this title, the Commission shall—

10 (1) maintain within the Commission—

11 (A) a toll-free hotline that a consumer may
12 call to report an incident of price gouging in the
13 affected area; and

14 (B) a program to develop and distribute to
15 the public informational materials to assist resi-
16 dents of the affected area in detecting, avoid-
17 ing, and reporting price gouging;

18 (2) consult with the Attorney General, the
19 United States Attorney for the districts in which a
20 disaster occurred (if the declaration is related to a
21 major disaster), and State and local law enforcement
22 officials to determine whether any supplier in the af-
23 fected area is charging or has charged an uncon-
24 scionably excessive price for crude oil, gasoline, pe-

1 troleum distillates, or biofuel in the affected area;
2 and

3 (3) conduct investigations as appropriate to de-
4 termine whether any supplier in the affected area
5 has violated section 203 of this title, and upon such
6 finding, take any action the Commission determines
7 to be appropriate to remedy the violation.

8 **SEC. 206. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

9 (a) IN GENERAL.—A State, as *parens patriae*, may
10 bring a civil action on behalf of its residents in an appro-
11 priate district court of the United States to enforce the
12 provisions of section 203 of this title, or to impose the
13 civil penalties authorized by section 207 for violations of
14 section 203, whenever the attorney general of the State
15 has reason to believe that the interests of the residents
16 of the State have been or are being threatened or adversely
17 affected by a supplier engaged in the sale or resale, at
18 retail or wholesale, or distribution of crude oil, gasoline,
19 petroleum distillates, or biofuel in violation of section 203
20 of this title.

21 (b) NOTICE.—The State shall serve written notice to
22 the Commission of any civil action under subsection (a)
23 prior to initiating the action. The notice shall include a
24 copy of the complaint to be filed to initiate the civil action,
25 except that if it is not feasible for the State to provide

1 such prior notice, the State shall provide such notice im-
2 mediately upon instituting the civil action.

3 (c) AUTHORITY TO INTERVENE.—Upon receiving the
4 notice required by subsection (b), the Commission may in-
5 tervene in the civil action and, upon intervening—

6 (1) may be heard on all matters arising in such
7 civil action; and

8 (2) may file petitions for appeal of a decision in
9 such civil action.

10 (d) CONSTRUCTION.—For purposes of bringing any
11 civil action under subsection (a), nothing in this section
12 shall prevent the attorney general of a State from exer-
13 cising the powers conferred on the Attorney General by
14 the laws of such State to conduct investigations or to ad-
15 minister oaths or affirmations or to compel the attendance
16 of witnesses or the production of documentary and other
17 evidence.

18 (e) VENUE; SERVICE OF PROCESS.—In a civil action
19 brought under subsection (a)—

20 (1) the venue shall be a judicial district in
21 which—

22 (A) the defendant operates;

23 (B) the defendant was authorized to do
24 business; or

1 (C) where the defendant in the civil action
2 is found;

3 (2) process may be served without regard to the
4 territorial limits of the district or of the State in
5 which the civil action is instituted; and

6 (3) a person who participated with the defend-
7 ant in an alleged violation that is being litigated in
8 the civil action may be joined in the civil action with-
9 out regard to the residence of the person.

10 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
11 ACTION IS PENDING.—If the Commission has instituted
12 a civil action or an administrative action for violation of
13 this title, a State attorney general, or official or agency
14 of a State, may not bring an action under this section
15 during the pendency of that action against any defendant
16 named in the complaint of the Commission or the other
17 agency for any violation of this title alleged in the Com-
18 mission's civil or administrative action.

19 (g) NO PREEMPTION.—Nothing contained in this
20 section shall prohibit an authorized State official from pro-
21 ceeding in State court to enforce a civil or criminal statute
22 of that State.

23 **SEC. 207. PENALTIES.**

24 (a) CIVIL PENALTY.—

1 (1) IN GENERAL.—In addition to any penalty
2 applicable under the Federal Trade Commission Act,
3 any supplier—

4 (A) that violates section 203 of this title is
5 punishable by a civil penalty of not more than
6 \$1,000,000; and

7 (B) that violates section 203 of this title is
8 punishable by a civil penalty of—

9 (i) not more than \$500,000, in the
10 case of an independent small business mar-
11 keter of gasoline (within the meaning of
12 section 324(c) of the Clean Air Act (42
13 U.S.C. 7625(c))); and

14 (ii) not more than \$5,000,000 in the
15 case of any other supplier.

16 (2) METHOD.—The penalties provided by para-
17 graph (1) shall be obtained in the same manner as
18 civil penalties imposed under section 5 of the Fed-
19 eral Trade Commission Act (15 U.S.C. 45).

20 (3) MULTIPLE OFFENSES; MITIGATING FAC-
21 TORS.—In assessing the penalty provided by sub-
22 section (a)—

23 (A) each day of a continuing violation shall
24 be considered a separate violation; and

1 (B) the court shall take into consideration,
2 among other factors, the seriousness of the vio-
3 lation and the efforts of the person committing
4 the violation to remedy the harm caused by the
5 violation in a timely manner.

6 (b) CRIMINAL PENALTY.—Violation of section 203 of
7 this title is punishable by a fine of not more than
8 \$5,000,000, imprisonment for not more than 5 years, or
9 both.

10 **SEC. 208. EFFECT ON OTHER LAWS.**

11 (a) OTHER AUTHORITY OF THE COMMISSION.—
12 Nothing in this title shall be construed to limit or affect
13 in any way the Commission’s authority to bring enforce-
14 ment actions or take any other measure under the Federal
15 Trade Commission Act (15 U.S.C. 41 et seq.) or any other
16 provision of law.

17 (b) STATE LAW.—Nothing in this title preempts any
18 State law.

19 **TITLE III—STRATEGIC**
20 **PETROLEUM RESERVE**

21 **SEC. 301. SUSPENSION OF PETROLEUM ACQUISITION FOR**
22 **STRATEGIC PETROLEUM RESERVE.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b) and notwithstanding any other provision of law, during

1 the period beginning on the date of enactment of this Act
2 and ending on December 31, 2008—

3 (1) the Secretary of the Interior shall suspend
4 acquisition of petroleum for the Strategic Petroleum
5 Reserve through the royalty-in-kind program; and

6 (2) the Secretary of Energy shall suspend ac-
7 quisition of petroleum for the Strategic Petroleum
8 Reserve through any other acquisition method.

9 (b) RESUMPTION.—Not earlier than 30 days after
10 the date on which the President notifies Congress that the
11 President has determined that the weighted average price
12 of petroleum in the United States for the most recent 90-
13 day period is \$75 or less per barrel—

14 (1) the Secretary of the Interior may resume
15 acquisition of petroleum for the Strategic Petroleum
16 Reserve through the royalty-in-kind program; and

17 (2) the Secretary of Energy may resume acqui-
18 sition of petroleum for the Strategic Petroleum Re-
19 serve through any other acquisition method.

20 (c) EXISTING CONTRACTS.—In the case of any oil
21 scheduled to be delivered to the Strategic Petroleum Re-
22 serve pursuant to a contract entered into by the Secretary
23 of Energy prior to, and in effect on, the date of enactment
24 of this Act, the Secretary shall, to the maximum extent
25 practicable, negotiate a deferral of the delivery of the oil

1 for a period of not less than 1 year, in accordance with
2 procedures of the Department of Energy in effect on the
3 date of enactment of this Act for deferrals of oil.

4 **TITLE IV—NO OIL PRODUCING**
5 **AND EXPORTING CARTELS**

6 **SEC. 401. NO OIL PRODUCING AND EXPORTING CARTELS**

7 **ACT OF 2008.**

8 (a) **SHORT TITLE.**—This section may be cited as the
9 “No Oil Producing and Exporting Cartels Act of 2008”
10 or “NOPEC”.

11 (b) **SHERMAN ACT.**—The Sherman Act (15 U.S.C.
12 1 et seq.) is amended by adding after section 7 the fol-
13 lowing:

14 **“SEC. 7A. OIL PRODUCING CARTELS.**

15 “(a) **IN GENERAL.**—It shall be illegal and a violation
16 of this Act for any foreign state, or any instrumentality
17 or agent of any foreign state, to act collectively or in com-
18 bination with any other foreign state, any instrumentality
19 or agent of any other foreign state, or any other person,
20 whether by cartel or any other association or form of co-
21 operation or joint action—

22 “(1) to limit the production or distribution of
23 oil, natural gas, or any other petroleum product;

24 “(2) to set or maintain the price of oil, natural
25 gas, or any petroleum product; or

1 “(3) to otherwise take any action in restraint of
2 trade for oil, natural gas, or any petroleum product;
3 when such action, combination, or collective action has a
4 direct, substantial, and reasonably foreseeable effect on
5 the market, supply, price, or distribution of oil, natural
6 gas, or other petroleum product in the United States.

7 “(b) SOVEREIGN IMMUNITY.—A foreign state en-
8 gaged in conduct in violation of subsection (a) shall not
9 be immune under the doctrine of sovereign immunity from
10 the jurisdiction or judgments of the courts of the United
11 States in any action brought to enforce this section.

12 “(c) INAPPLICABILITY OF ACT OF STATE DOC-
13 TRINE.—No court of the United States shall decline,
14 based on the act of state doctrine, to make a determina-
15 tion on the merits in an action brought under this section.

16 “(d) ENFORCEMENT.—The Attorney General of the
17 United States may bring an action to enforce this section
18 in any district court of the United States as provided
19 under the antitrust laws.”.

20 (c) SOVEREIGN IMMUNITY.—Section 1605(a) of title
21 28, United States Code, is amended—

22 (1) in paragraph (6), by striking “or” after the
23 semicolon;

24 (2) in paragraph (7), by striking the period and
25 inserting “; or”; and

1 (3) by adding at the end the following:

2 “(8) in which the action is brought under sec-
3 tion 7A of the Sherman Act.”.

4 **TITLE V—MARKET**
5 **SPECULATION**

6 **SEC. 501. SPECULATIVE LIMITS AND TRANSPARENCY FOR**
7 **OFF-SHORE OIL TRADING.**

8 Section 4 of the Commodity Exchange Act (7 U.S.C.
9 6) is amended by adding at the end the following:

10 “(e) FOREIGN BOARDS OF TRADE.—

11 “(1) IN GENERAL.—In the case of any foreign
12 board of trade for which the Commission has grant-
13 ed or is considering an application to grant a board
14 of trade located outside of the United States relief
15 from the requirement of subsection (a) to become a
16 designated contract market, derivatives transaction
17 execution facility, or other registered entity, with re-
18 spect to an energy commodity that is physically de-
19 livered in the United States, prior to continuing to
20 or initially granting the relief, the Commission shall
21 determine that the foreign board of trade—

22 “(A) applies comparable principles or re-
23 quirements regarding the daily publication of
24 trading information and position limits or ac-
25 countability levels for speculators as apply to a

1 designated contract market, derivatives trans-
2 action execution facility, or other registered en-
3 tity trading energy commodities physically deliv-
4 ered in the United States; and

5 “(B) provides such information to the
6 Commission regarding the extent of speculative
7 and nonspeculative trading in the energy com-
8 modity that is comparable to the information
9 the Commission determines necessary to publish
10 a Commitment of Traders report for a des-
11 ignated contract market, derivatives transaction
12 execution facility, or other registered entity
13 trading energy commodities physically delivered
14 in the United States.

15 “(2) EXISTING FOREIGN BOARDS OF TRADE.—
16 During the period beginning 1 year after the date of
17 enactment of this subsection and ending 18 months
18 after the date of enactment of this subsection, the
19 Commission shall determine whether to continue to
20 grant relief in accordance with paragraph (1) to any
21 foreign board of trade for which the Commission
22 granted relief prior to the date of enactment of this
23 subsection.”.

1 **SEC. 502. MARGIN LEVEL FOR CRUDE OIL.**

2 (a) IN GENERAL.—Section 2(a)(1) of the Commodity
3 Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding
4 at the end the following:

5 “(G) MARGIN LEVEL FOR CRUDE OIL.—

6 Not later than 90 days after the date of enact-
7 ment of this subparagraph, the Commission
8 shall promulgate regulations to set a substantial
9 increase in margin levels for crude oil traded on
10 any trading facility or as part of any agree-
11 ment, contract, or transaction covered by this
12 Act in order to reduce excessive speculation and
13 protect consumers.”.

14 (b) STUDIES.—

15 (1) STUDY RELATING TO EFFECT OF CERTAIN
16 REGULATIONS.—Not later than 1 year after the date
17 of enactment of this Act, the Commodity Futures
18 Trading Commission shall submit to the appropriate
19 committees of Congress a report describing the ef-
20 fect of the amendment made by subsection (a) on
21 any trading facilities and agreements, contracts, and
22 transactions covered by the Commodity Exchange
23 Act (7 U.S.C. 1 et seq.).

24 (2) STUDY RELATING TO EFFECTS OF CHANGES
25 IN MARGIN LEVELS.—Not later than 180 days after
26 the date of enactment of this Act, the Comptroller

1 General of the United States shall submit to the ap-
2 propriate committees of Congress a report describing
3 the effect (including any effect relating to trade vol-
4 ume or volatility) of any change of a margin level
5 that occurred during the 10-year period ending on
6 the date of enactment of this Act.